

ORDINANCE 12-08

AN ORDINANCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS, AMENDING CHAPTER 23, SUBDIVISION REGULATIONS, ARTICLE 1, SECTION 23.14(H) STANDARDS AND SPECIFICATIONS ALLOWING FOR THE INSTALLATION OF IMPROVEMENTS, NAMELY: PRIVATE STREETS; PROVIDING FOR A PENALTY OF UP TO FIVE HUNDRED (\$500.00) FOR EACH VIOLATION; PROVIDING FOR THE EFFECTIVE DATE; AND AUTHORIZING PUBLICATION IN CAPTION FORM.

WHEREAS, in accordance with Chapter 212 of the Texas Local Government Code, the Planning and Zoning Commission is authorized to adopt regulations to promote the public health, safety and welfare of the City; and,

WHEREAS, the Planning and Zoning Commission wishes to adopt regulations to govern the subdivision of private streets in the City of South Padre Island; and,

WHEREAS, the Planning and Zoning Commission recommends the City Council amend and approve Chapter 23.14(H) of the City Code to include regulations to govern the subdivision of private streets in the City of South Padre Island.

NOW, THEREFORE, BE IT ORDAINED BY CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS:

SECTION 1: Section 23.14(H) of Chapter 23, Subdivision Regulations, of the City of South Padre Island Code of Ordinances is hereby amended to read as follows:

“(H) Private Improvements; Private Streets.

(1) **Applicability.** Private streets are permitted and are subject to the design criteria and standards of Chapter 23 Subdivision Ordinance. Private streets are only allowed within an enclave subdivision subject to being designed and constructed to the standards of a public street.

(2) **Design Standards.** Right-of-way for a private street is not dedicated to the public; however, it must be designated as a "private street, drainage, and public utility easement." The right-of-way required for private streets shall be based upon the same criteria as for public streets in similar developments. The design

standards and construction specifications of private streets shall be the same as for public streets except as noted below:

- (a) A right-of-way of fifty (50) feet for a Local Street (as defined by Institute Transportation Engineers Functional Classification System).
- (b) A right-of-way of twenty-five (25) feet for Access Drive(s).
- (c) The paved street width, exclusive of curb exposures, shall be a minimum of twenty-five (25) feet for Local Streets.
- (d) Dead-end street shall be allowed on blocks with six or fewer lots and less than 150 feet in length, measured from the point of intersection between the private street and the public right-of-way.

(3) **Certification.** Upon completion of construction, the Public Works Director shall be provided with a written certification signed by a licensed professional engineer certifying that the private streets and sidewalks (as applicable) were designed and installed as required by the provisions of this chapter.

(4) **Maintenance.** Private streets and sidewalks shall be owned and maintained by a corporation, community association, or other legal entity established for this purpose.

(5) **Converting Private Streets into Public Streets.** Upon the request of any person, the City may, in its discretion, accept a private street(s) into the City's street network subject to the following processes:

The requesting person at their expense must provide an engineering report to the public works department for review. The engineering report shall include all of the following:

- (a) Request from any person that the city accept the private street(s);
- (b) Document indicating one hundred (100) percent owners' participation;
- (c) Subdivision plat;
- (d) Subdivision construction plans to include plan and profile;
- (e) Certification letter from the project engineer certifying the construction of the subdivision was done in accordance with the public works specifications;

- (f) Photos showing the conditions of the existing roadway and right-of-way throughout the subdivision; and
- (g) Site plan showing location of streetlights and traffic control devices (if applicable).

The engineering report must be completed before the public works department proceeds with all of the following procedures:

(i) Public works department receives engineering report and distributes it to appropriate city departments.

(ii) If the Development Department determines one hundred (100) percent of the legal property owners are represented as supporters of the request, this information is forwarded to the Public Works Director. If support for the ownership transfer is less than one hundred (100) percent, this information is submitted to the public works department who will notify the applicant of the denial of the request.

(iii) The Public Works Director will evaluate street surface condition and appurtenances information. If a low score is given, then the Public Works Director will notify the applicant of the denial of the request.

(iv) The Public Works Director may recommend to City Council that it is in the interest of the City to accept the street for ownership and maintenance, and subsequently, the City Council's approval of acceptance is required before any street may become a public street.

(v) Process for removal of control access facilities (gate, rails, house, etc.).

(6) Parking on Private Streets. Parking shall be prohibited on any private street less than twenty-eight (28) feet in width and, if utilized on streets thirty (30) feet wide or wider, it must be clearly distinguishable from the movement lanes and not impede the lane(s) of travel.

(7) Infrastructure Requirements.

- (a) **Streets and Sidewalks.** Vehicular circulation may also be provided by internal private Access Drives. Access Drives must meet the requirements for fire lanes as per the International Fire Code for width, lengths and parking requirements whether for a commercial or residential base zoning. A building permit must be obtained for Access Drives, and would include site plan review and inspection for flatwork/civil work within the public ROW.
- (b) **Utilities.** All utility systems shall comply with the utilities standards of this chapter. Water and sanitary sewer systems may be publicly or privately owned; however, the maintenance of private systems shall be the responsibility of the community association. Public utility systems shall be approved by the applicable agency or city department.
- (c) **Utility Easements.** Publicly owned and/or maintained utilities shall be placed in streets or easements, which are a minimum of sixteen (16) feet in width unless a narrower width is approved by the applicable utility.

The use of a utility easement may be permitted if it provides for each of the following:

- (i) The easement shall be approved by the city (Development Director and the City Attorney) prior to recordation in the Cameron County Deed Records.
- (ii) The document provides for an irrevocable access easement.
- (iii) The easement shall be accompanied by a maintenance agreement that the owner of the property shall maintain the easement in a safe and operable condition and shall correct any safety hazards or eminent needs if such is determined to be required by the city in order to protect the use of the easement.

(8) Private Streets, sidewalks, landscaping and lighting, and other common areas and facilities. Provisions shall be made for a property owners' association that is designated as the representative of the owners of property in a residential subdivision. The property owners' association shall have the direct responsibility to provide for the operation and maintenance of all common areas and facilities, including private streets and sidewalks, which are a part of the subdivision. The applicant shall submit the dedicatory instrument(s) covering the establishment, maintenance, and operation of a residential subdivision. The dedicatory instrument(s) shall establish a plan for the use and permanent maintenance of the common areas/facilities and demonstrate that the property owners' association is self-perpetuating and adequately funded by regular assessment and/or special assessment to accomplish its purposes. The dedicatory instrument(s) shall include provisions that provide the city with permission for access at any time without liability when on official business, and further, to permit the city to remove obstructions if necessary for emergency vehicle access and assess the cost of removal to the owner of the obstruction. The dedicatory instrument(s) must be approved by the city attorney as to legal form prior to any plat recordation and shall be recorded at the same time as the plat.

(a) "**Property owners' association**" means an incorporated or unincorporated association that: (i) is designated as the representative of the owners of property in a residential subdivision; (ii) has a membership primarily consisting of the owners of property covered by the dedicatory instrument for the residential subdivision; and (iii) manages or regulates the residential subdivision for the benefit of the owners of property in the subdivision. "Property owners' association" also means the designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the dedicatory instrument.

(b) "**Dedicatory instrument**" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or other

similar instruments that subject property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association; allow for properly adopted rules and regulations of the property owners' association; and authorize enactment of lawful amendments to the covenants, bylaws, rules, or regulations.

(c) "**Regular assessment**" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the dedicatory instrument.

(d) "**Special assessment**" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property within a residential subdivision is required to pay to the property owners' association, according to the procedures required by the dedicatory instrument which must have provisions for:

(i) Defraying, in whole or part, the cost whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(ii) Maintenance and improvement of common areas owned by the property owners' association; or

(iii) Other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

(iv) The entrance to private streets may provide control access by gates or other means permitted by this chapter.

(9) **Parking Requirements.** Off-street parking and truck loading facilities shall be provided in accordance with parking standards of this chapter.

(10) **Gated Subdivision Streets.**

(a) **Pavement Management.** The applicant shall include with the property owners' association (POA) documents a forecast and schedule of street maintenance costs prepared by a licensed professional engineer, licensed as such by the State of Texas. A maintenance account with seed money shall be established by the developer to enable the POA to meet the maintenance schedule until the POA is self-sufficient. Any POA requesting that the City acquire their private streets shall produce documentation that the maintenance schedule set forth in the POA's original pavement management plan as part of the POA documents has been followed.

(b) **Fire Lanes.** The POA documents shall require the POAs to identify and enforce a no parking restriction in fire lanes throughout the community.

(c) **Master Key Security System.** A master key security system shall be provided on all gates. The security system shall include the following for the specified type of gate:

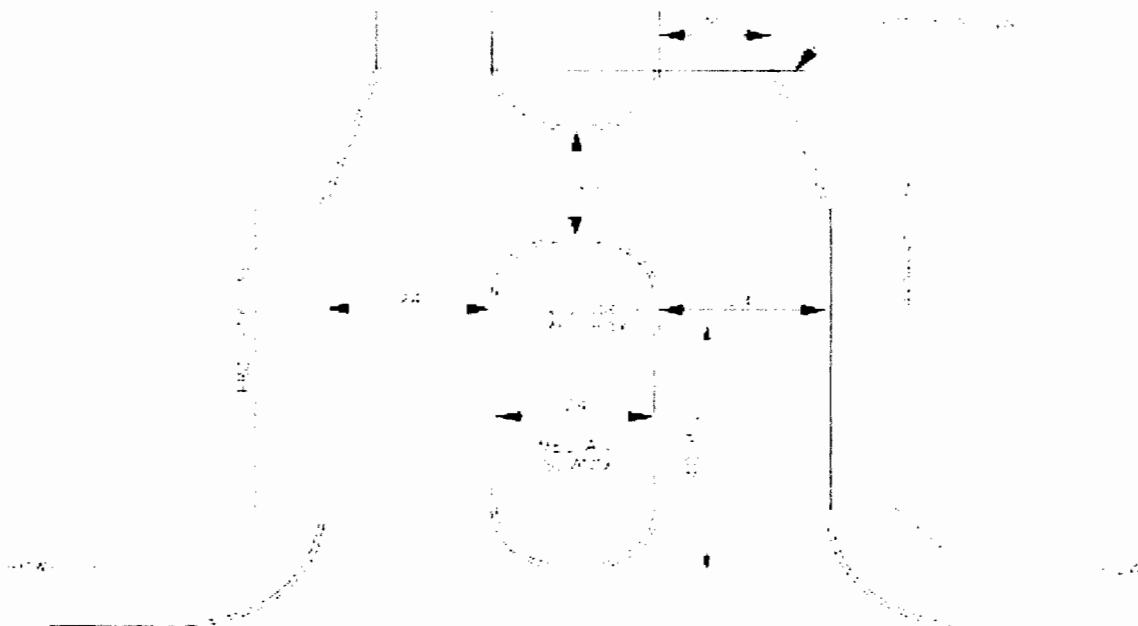
(i) Electric Operated Gates require either a gate override in case of power failure and a master key provided to the fire department and police department, or a Knox box.

(ii) Non-electric Operated Gates require a Knox box.

(d) **Queuing.** At gated entrances where traffic can queue into public streets, the gate and entrance design must provide for sufficient storage capacity so that no vehicles will queue into the public street. Queuing at a gated entrance shall be designed as follows:

(1) That no vehicles will queue into the public street with a ninety-five (95) percent confidence level per engineering analysis. The minimum entryway vehicle storage length shall be forty (40) feet measured from the call box to the public right-of-way as shown in the figure below.

(2) The subdivide shall provide for vehicle turnaround capability based on the single unit design vehicle as provided in the 2004 AASHTO Green Book or latest revision thereof or be able to make a three-point turning movement.



“(end quote)”

SECTION 2: This ordinance repeals all portions of any prior ordinances or parts of ordinances of the Code of Ordinances in conflict herewith.

SECTION 3: Any violation of this Ordinance may be punished by a fine not to exceed Five Hundred Dollars (\$500.00) for each offense or for each day such offense shall continue and the penalty provisions of Section 21-2 of the Code of Ordinances is hereby adopted and incorporated for all purposes.

SECTION 4: If for any reason, any section, paragraph, subdivision, clause, phrase, word, or provision of the Ordinance shall be held unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this Ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word, or provision hereof be given full force and effect for its intended purpose.

SECTION 5: This Ordinance shall become effective on publishing its caption.



PASSED, APPROVED AND ADOPTED on First Reading, the 18TH day of July, 2012.

PASSED, APPROVED AND ADOPTED on Second Reading, the 1ST day of August, 2012.

ATTEST:

CITY OF SOUTH PADRE ISLAND, TEXAS



SUSAN HILL, CITY SECRETARY



ROBERT N. PINKERTON, JR., MAYOR